RETURN

(79)

To An Address of the House of Commons dated the 2nd April, 1903, for copies of all judgments or opinions delivered by the Supreme Court of Manitoba, touching the alleged rights of exemption from taxation, claimed by the Canadian Pacific Railway Company, in respect of the land of the said Company, in the North-west Territories or in Manitoba.

R. W. SCOTT,
Secretary of State.

NORTH CYPRESS vs. C. P. R.

ARGYLE vs. C. P. R.

SPRINGDALE vs. C. P. R.

March 14, 1903.

Killam, C. J.

Appeals have been brought from judgments dismissing three actions against the Canadian Pacific Railway Company for the recovery of taxes upon lands. By consent, the actions and the appeals have been consolidated, and are to be dealt with together.

In two cases the actions were brought by rural municipalities in the province of Manitoba. In the other case the plaintiff is a school corporation in the North-west Territories. The company has defended without objection, and it now submits to the jurisdiction of this court in the latter action. We are informed that the suits have been instituted by arrangement between the government of Canada and the Railway Company, for the purpose of settling the liability of the company's lands to taxation by corporations of the characters of the respective plaintiffs, and under the various sets of circumstances appearing. They have been heard upon the pleadings and certain documentary evidences and admissions of fact.

It is admitted that the various steps necessary to the assessment of the different parcels of land and the imposition of the rates have been duly taken, and that the company is liable to personal actions for the respective amounts claimed, unless the lands were exempt from assessment and taxation under the contract for the construction of the railway made between the promoters of the company and the government of Canada, and the legislation relating thereto.

Both North Cypress and Argyle are municipalities in that portion of Manitoba added to the province under the Act of Parliament of Canada, 44 Vic., c. 14 (1881), assented to by the legislature of Manitoba by the Act 44 Vic., 3rd session, c. 1. The extension took effect on July 1, 1881.

The parcels of lands for taxes on which the municipality of North Cypress sues are two of the sections bearing uneven numbers, lying within the belt of 48 miles in

width, 24 miles on each side of the railway, from which the land subsidy of the company was, in the first place, to be granted under paragraph eleven of the contract.

The parcel in respect of which the municipality of Argyle sues is not in that belt, but in one to the south of it, first set aside for the purpose of the contract by order in council of November 2, 1882

The parcel in respect of which the school district sues is in the North-west Territories, and is one-half of a section of land of uneven number in the belt of 48 miles referred to by the 11th paragraph of the contract.

The contract for the construction of the Canadian Pacific Railway bore the date of October 21, 1880, and was originally made between the Crown and a number of individual persons and firms acting for a company proposed to be incorporated by an Act of incorporation in a form agreed upon in the contract.

By Act of the Parliament of Canada, assented to on February 15, 1881, the contract was approved and ratified, and the government was authorized to perform and carry out the conditions thereof according to their purport.

The Act provided that for the purpose of incorporating the parties to the contract, and of granting to them the powers necessary to enable them to carry out their contract, the Governor General might grant to them a charter of incorporation in conformity with the contract, and that the charter being published in the *Canada Gazette* with any order or orders in council relating to it, should have force and effect as if it were an Act of Parliament, and be held to be an Act of incorporation within the meaning of the contract.

On February 16, 1881, letters patent were issued incorporating the company, and these were published in full in the *Canada Gazette* of February 19, 1881, with a statement that they were issued under an order in council of February 16, 1881.

Under the contract the government was to give to the company a subsidy of twenty-five million dollars in money and of twenty-five million acres of land, for which the construction of the stipulated railway was to be completed, and the railway was then to be equipped, maintained and operated by the company. Other benefits and privileges were also agreed to be conferred upon the company, among which were to be the grant to the company of the lands required for the road-bed of the railway and for its stations, station grounds, &c., in so far as such lands should be vested in the government, and an agreement from exemption from taxation in the words following:—

16. The Canadian Pacific Railway and all stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances required and used for the construction and working thereof, and the capital stock of the company shall be forever free from taxation by the Dominion, or by any province hereafter to be established, or by any municipal corporation therein; and the lands of the company in the North-west Territories, until they are either sold or occupied, shall also be free from such taxation for twenty years after the grant thereof from the Crown.

By letters patent of incorporation, paragraph 3, upon certain portions of the company's capital stock being subscribed and paid up, and a certain deposit being made with the government for the purpose and upon the conditions in the foregoing contract provided, the said contract shall become and be transferred to the company, without the execution of any deed or instrument in that behalf; and the company shall, thereupon, become and be vested with all the rights of the contractors named in the said contract, and shall be subject to and liable for all their duties and obligations, &c.

And by paragraph 4, all the franchises and powers necessary or useful to the company to enable them to carry out, perform, enforce, use, and avail themselves of every condition, stipulation, obligation, duty, right, remedy, privilege, and advantage agreed upon, contained or described in the said contract, are hereby conferred upon the company.

Shortly after the granting of this charter, by the Act 44 Vic., c. 14, the parliament of Canada enlarged the province of Manitoba by the addition of territory which had until then been part of the North-west Territories. This enlargement was to be upon

certain terms and conditions, one of which was thus expressed: 'The said increased limit and territory thereby added to the province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

By the Act 44 Vic., 3rd session, c. 1, the legislature of Manitoba expressed its consent to the proposed enlargement of the province, and to the terms and conditions thereof, and soon after, by another Act of the same session, reciting its consent to and adoption of these terms and conditions, the legislature enacted that the boundaries and limits of the province should be extended and increased as provided by the Dominion Act, and subject to the terms and conditions therein contained, and that the said Act and all enactments and provisions thereof should have the force and effect of law in this province so increased and enlarged as aforesaid.

The substance of this provincial legislation is still retained in the Provincial Boundaries Act, R. S. M., c. 11 ; R. S. M. (1902), c. 12.

All question as to the effect of this legislation in limiting the powers of the provincial legislature appears to be settled, so far as we are concerned, by the decisions of this court and of the Supreme Court of Canada in the case of the Canadian Pacific Railway Company v. the Rural Municipality of Cornwallis, 7 M. R. I., 19 S. C. R. 702, and I will summarize the points very briefly.

The terms and conditions upon which the extension of the boundaries of Manitoba was made by the Dominion and accepted by the province imposed constitutional limitations upon the authority of the provincial legislature with respect to the added territory different from those existing with respect to the original province.

The restriction in the sixth section of the British North America Act, 1871, upon the power of the Parliament of Canada to alter the Act establishing the province of Manitoba, was subject to an exception of the provisions in the third section relating to the alteration of provincial boundaries. The expression 'terms and conditions' in the latter section was apt to include limitations of provincial powers, and was accepted by both the Dominion parliament and the provincial legislature as appropriate for the purpose.

The terms of the agreement between the government of Canada and the promoters of the Canadian Pacific Railway Company and those of the company's charter, in view of the Act of parliament confirming and authorizing them, constituted provisions enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

By these provisions the parliament of Canada enacted that the powers of taxation of these lands by the Dominion should be limited, and the Dominion transferred the territory to Manitoba subject to that limitation, which must thereafter apply to the province.

By the expression 'the lands of the company in the North-west Territories,' as used in the exemption clause, were meant the lands to be acquired by the company in that part of Canada then known as the North-west Territories, without reference to the name or political constitution of the Territories or any part thereof when the lands should be granted or thereafter.

The clause contemplated the establishment of provinces, upon conclusion in which the lands therein would no longer be properly described as in the North-west Territories, but were still to be covered by the exemption.

The territory was transferred to Manitoba subject to this, among other, provisions of the agreement, and the lands therein must be entitled to the same exemption as if they were lands of the company when the transfer was made. It was the lands 'to be granted' that were covered by the condition.

The exemption clause was part of the contract between the government of Canada and the promoters of the company, and it must be constructed upon the ordinary principles of the interpretation of contracts, after an examination of the whole instrument,

including the schedule giving the form of charter of the proposed company, though, of course, in this case with the aid of the ratifying Act.

The exemption was to be one portion of the consideration for a work and service which the government wished to obtain. The clause providing for it must be construed upon the same principles as the clauses providing for other portions of the consideration.

Portions of the railway had been constructed, or were being constructed, by the government when the contract was made. So long as the line and the lands used therefor were the property of the government they could not be taxed. All of the land subsidy and most of the lands to be acquired for railway purposes then belonged to the government. It was quite competent for the government to contract not to tax the property in the hands of the company, and not to create another authority with power to do so.

On the other hand, the right to exemption to taxation was not to be implied from the general nature of the contract or its other terms, and there could be no presumption of an intention to give such a right to any greater extent than was actually expressed.

In the Cornwallis case, as well as in that of the Canadian Pacific Railway Company v. Burnett, 5 M. R., 395, the main question was as to the meaning of the word 'sold' in the exemption clause; but that of the date of commencement of the twenty years' terms arose incidentally in the Cornwallis case under the contention on behalf of the municipality that before the grant from the crown the company acquired an interest which was subject to taxation. Both Sir Thomas W. Taylor, then chief justice of the court, and myself were of opinion that the twenty years were to run from the issue of letters patent granting the lands to the company. In the Supreme Court the point was not decided.

Upon further consideration, I remain of the same opinion which I expressed in the Cornwallis case, that it was not intended that, under the contract or the charter or ratifying Act, the company should take any vested interest in any specific lands until actual formal conveyance. The exemption clause and provisions as to the attaching of a charge to secure the land grant bonds appeared to be framed on this principle. The provisions for the retention of every fifth section by the crown, the uncompleted state of the surveys, the uncertainty likely to exist in some cases for two or three years as to sections being fit for settlement, the importance to the government of retaining in its own hands the power of settling the claims of squatters or others, and of determining in the usual course of crown land administration the right of the company to a patent in each case, unembarrassed by derivative claims or assessments or tax titles, must all be considered.

But putting all this aside, and without reference to any question of the power to decree specific performance as against the crown, or to impress a trust estate upon the lands in the hands of the crown, the language of the contract itself seems to import that the 'grant thereof from the crown' referred to in the exemption clause was to be a formal grant by conveyance of the lands in the usual course.

The words themselves would naturally import this, and the clause is found in the midst of others constantly referring to such expected grants. It appears to me absolutely clear that the twenty years of exemption were to run from the time when the company should acquire a full and complete title, legal and equitable, such as would entitle it absolutely to deal with the land and as it took force upon a purchaser.

No doubt a grant by parliament would be covered by the words, and parliament could make its grant to take effect at once or at any future time performance of conditions. We have referred to a number of decisions of the Supreme Court of the United States as supporting the contention that such a grant was effected by the Act ratifying the agreement. These were based to some extent upon express words of grant in the statutes under consideration. There are no words of grant in our Act.

The third section did empower the government, upon the organization of the company and the making of a certain deposit, to grant to the company a subsidy of twenty-

five million dollars in money and twenty-five million acres of land, but to be paid and conveyed as provided by the contract. I cannot interpret this as intended to effect or authorize, upon performance of these conditions, a grant such as the exemption clause refers to, or as contemplating any further act or grant, or even any further agreement to be done or made immediately. The obvious intention of the section was to indicate that the first acts were to be the organization of the company and the making of the deposit, after which the further execution of the contract was to proceed according to its terms.

The United States cases went also, in some instances, upon implications of grants of equitable interests not expressly given. Taking the contract by itself, I cannot interpret it as having reference to such a grant by implication or by reference to the doctrines of courts of equity.

The case from the North-west Territories raises another question of equal importance to that which I have been discussing, but which, owing largely to the somewhat confused course of legislation respecting the Territories, appears to me to be one of much greater difficulty.

Does the exemption apply to the enactments of the legislature of the North-west Territories or to taxation by subordinate bodies created by that legislature?

This is not wholly a new question. It was raised in the Supreme Court of the Territories nearly two years ago in the case of the Trustees of the Protestant Public School District of Balgonie vs. the Canadian Pacific Railway Company, 5 N.W.T.R., 123, where it evoked some conflict of judicial opinion. Two of the learned judges held that it did apply. One evinced an inclination to the opposite view, but concurred in the result on another ground. The fourth concurred without giving any reason. This cannot be deemed conclusive even in the Territories. That the point was not raised sooner or more frequently may, perhaps, be to some extent due, as the plaintiffs' counsel suggests, to the delay in the issue of patents, and the difficulties in the way of taxing unpatented lands.

The question is primarily one of contract, to be solved by fair and reasonable interpretation of the language used, having reference to existing circumstances. No exemption was to be implied or presumed. It must be the subject of express agreement, and the burden must be upon those asserting its existence.

The question whether, by the contract and the ratifying Act, the authority of the Governor General to extend the legislative powers of the North-west council was restricted, and whether the subsequent statutes and orders in council should be interpreted with the limitations accepted by the Dominion upon its own powers of taxation, either by virtue of the restrictions against enactments inconsistent with Acts referring to the Territories or under the maxim *generalia specialibus non derogant,* should be kept entirely separate from the question of construction of the contract.

The railway and all stations, &c., were to be 'forever free from taxation by the Dominion, or by any province hereafter to be established, or by any municipal corporation,' and the lands of the company in the Territories, until they should be either sold or occupied, were to be 'free from such taxation for twenty years from the grant thereof by the crown.' It appears clear, and is not disputed, that the word 'therein' referred to new provinces only, and that the expression 'such taxation' meant taxation by some one of the bodies previously named. It is not claimed that the Territories under their present constitution are a province within the meaning of the clause. It is upon the words 'taxation by the Dominion' that the advocates of the exemption take their stand.

Evidently these words did not mean taxation by any government or authority in the Dominion having the power of levying taxes. Taxation by a province or by a municipal corporation was recognized as something different from taxation by the Dominion, as under our constitution would naturally be expected.

The contention for the defence is that the governing body of the North-west Territories was a delegate of the parliament and government of Canada, and what, on this principle, taxation by authority of that council would be taxation by the Dominion.

This involved some consideration of the history and constitution of the Territories. I have made a careful examination of the legislation on the subject, including the Imperial Acts 31 and 32 Vic., c. 105 (1868), and 34 and 35 Vic., c. 28 (1871), the numerous Acts of the Parliament of Canada relating to the Territories, and the orders in council of 1877 and 1886 conferring certain legislative powers. They present an interesting picture of development from government by the Lieutenant Governor and an appointed council to a system of representative and responsible governmnt by a Lieutenant Governor and an elective assembly, with an executive council responsible to the assembly.

In October, 1880, when the contract with the promoters of the company was made, the legislative powers were vested in the Lieutenant Governor and council. The council was composed of members appointed by the Governor General, not exceeding six in number, with provision dating back as far as 1875 for the introduction of members to be elected by the people until the elected members should number twenty-one, when the council was to be superseded by a legislative assembly wholly elective.

The legislative powers, except some especially given by parliament, were conferred by order of the Governor General in Council.

I am not aware whether there were any elective members in 1880, but there appears in the printed volume of ordinances of 1880, a proclamation of the Lieutenant Governor dated 13th of November, 1880, establishing three electoral districts and one of the 5th of February, 1881, making provisions for the election of members, and in the printed volume of ordinances of 1883, proclamations establishing several other electoral districts. Until 1888 the ordinances purport to be enacted by the Lieutenant Governor in Council; in 1888, and subsequently by the Lieutenant Governor, by and with the advice and consent of the legislative assembly, in accordance with the Act of parliament of that year.

In 1880 it must have been contemplated that the elective element of the council would speedily predominate. The construction of the railway was deemed necessary, as the ratifying Act of 1881 was cited, for the development of the Territories, and was likely to lead to an early increase of population.

The body which would have the legislative power in the Territories, when the company would acquire property that could be taxed, would be largely or wholly a body elected by the people.

It does not seem to me that the government of the Territories could be properly described as a delegate or branch of the Dominion government or taxation by its authority, within its then powers, as taxation by the Dominion.

Its position appears to be appropriately described by the language of Lord Selbourne, with reference to India, in the Queen vs. Burah, 3 A.C. 889, 'the Indian legislation has powers expressly limited by the Act of the Imperial parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe those powers. But then acting within those limits, it is not in any sense an agent or delegate of the Imperial parliament, but has and is intended to have plenary powers of legislation as large and of the same nature as those of parliament itself.

The fact that the Governor General in Council could confer and had conferred some of the legislative powers, instead of this being entirely done by Act of parliament, does not appear to me to affect this view ; and the powers relating to education and to assessment in support of schools were contained in the Act of parliament itself in a section which with the omission of the first few lines, still remains as the authority for the legislation establishing the school district now suing.

The expression 'taxation by the Dominion' having reference to the natural sense of the language, would not appear to me to include taxation by an authority occupying the position which the government of the Territories then held. In considering whether upon the exemption clause as a whole or in view of the whole contract, a wider meaning should be given to the expression, what strikes one at the outset is that, while new provinces and municipal corporations therein were specified, no

reference was made to the territorial government or municipal corporations in the Territories. One argument strongly argued is that it would not be consistent to limit new provinces to be carved out of the Territories to a greater extent than the Territories were limited. But are we in a position to assume that some considerations might not have influenced the government to contemplate that very thing.

It seems to me not wholly impossible that the government may have been unwilling to agree to limitations upon powers already bestowed upon what was about to become a representative government, while expecting that the advantages of provincial status and other terms that it might offer would make the resident of the Territories willing to accept a provincial constitution with the stipulated limitations.

In the one case the powers had been given, in the other they would require the authority of parliament. It was one thing to agree not to bestow powers upon a new creature, quite another to agree to limit those already given to an existing one.

The legislation affecting the legislative powers of the Territories was in a very confused state when this contract was made, and it is difficult to judge just what powers the parties to the contract considered the territorial government to possess, if they really thought of that question.

The question whether a school district or other local body levying taxation for the support of schools only, under the special provisions of the Territories Act, was a municipal corporation within the meaning of the exemption clause is not by any means one upon which only one conclusion can be reached. In the abstract such a body may be properly included under the term 'municipal.' But the Act of 1875 seems to distinguish between them and we are familiar with the distinction in common language and in the statutes of some provinces. The supposed inconsistencies would disappear upon the hypothesis that the parties consider that the power of establishing municipal corporations such as the Act of 1875 provided for was wholly gone, and by construing the term 'municipal corporation' in the exemption clause as not including a body having the power of local taxation for the support of schools only under the 10th section of the Act of 1880.

I merely offer these suggestions as showing how purely speculative is the argument to be drawn from the supposed inconsistency. We are not in a position to judge whether the point was expressly considered or discussed or whether, through inadvertence or accident, it was *casus omissus*.

In my opinion the expression 'taxation by the Dominion' did not, either from the import of the words themselves or by reference of other portions of the clause or the contract, include taxation by the government of the Territories or anybody to be established by it, within its then powers.

The question of what were the powers of that government when the contract was made is that upon which I have most doubt and upon which I shall express an opinion with much hesitation. I shall not delay to refer in detail to the various confusing statutes. I shall endeavour to state my construction in the briefest possible manner.

I take the education clause in the present Territories Act, R.S.C., c. 14, as authorizing the formation of the school district, with the necessary powers of taxation to support the action. This, I understand, not to be disputed, save as regards the exemption. I consider the clause as it stood in the Act of 1880, sec. 10, without the retroactive amendment, as sufficient for the same purpose. If the effect of the repeal of the Acts of 1875 and 1877 was sufficient to take away the power to establish municipal corporations and to leave no express provision for the adoption of a system of taxation, I would imply from section 10 standing by itself, the power to establish such a system for the purposes of the section. If the power to establish municipal corporation remained under the order in council of 1877, then the Territorial government had the power, by means of the two, to authorize the taxation for school purposes. Apparently, parliament intended that the Territories should retain some

power of legislating respecting education and of providing for local assessments for the support of schools.

The conclusion which I read is that, when the contract was made the Territories had power to establish the system of local taxation for the support of schools under which the claim of this school district arises, that the contract with the promoters of the company was not intended to bind the Dominion to restrict that power either with reference to property to be thereafter acquired from the crown or others, and that the ratifying Act and the subsequent legislation did not restrict it.

I desire that my opinion be considered as limited to assessments in the Territories by school districts or bodies such as that now suing, and not as including taxation by the Territorial government or other bodies established by it. I think that the school district is not affected by exemption and is entitled to recover. In my opinion the appeals of the Manitoba municipalities should be dismissed, and the appeal of the school district should be allowed and judgment entered for it for the amount claimed with the costs of the action. I would allow no costs of any of the appeals.

DUBUC, J.

The first two plaintiffs are municipal corporations in the province of Manitoba, and the third one is an incorporated school district in the North-west Territories. They brought suits to recover certain taxes imposed on the lands of the defendants; but the ultimate purposes to obtain a judicial decision on the question whether the lands are taxable or exempt from taxation for municipal and school purposes, and to have it determined by the court at what time the twenty years' period of exemption claimed by the defendant on their lands as conferred on them by Act of parliament commenced to run.

Each case has a particular feature which distinguishes it from the others; and, by agreement of counsel, with the censent of the court, the three cases were argued together.

By contract dated October 21, between the Dominion government and parties representing the defendants' company, which contract was approved and ratified by and made a schedule to an Act of parliament, 44 Vic., c. 1, passed on February 15, 1881 it was agreed that the defendants were to construct and equip the Canadian Pacific Railway, and, as consideration therefor, were to receive from the Dominion twenty-five million dollars and twenty-five million acres of land.

Section II of the contract provides that the grant of land thereby agreed to be made shall be made in alternate sections of 640 acres each, extending back 24 miles deep, on each side of the railway from Winnipeg to Jasper House, in so far as such lands shall be vested in the government, the company receiving the sections bearing uneven numbers; and such sections were to be fairly fit for settlement; otherwise, the company was not obliged to receive them as part of such grant. In case of deficiency of available land in such reservations, the company was to take lands from other portions in the tract known as the fertile belt between the international line and the 57th degree of north latitude, or elsewhere at the option of the company.

The 24 miles reservation on each side of the railway line constitutes the first belt from which the defendants were to take the first portion of their grant, and it is shown that in such belt there is only about five million acres of land available to the company. The municipality of North Cypress is in that belt.

The second belt extends from the southern boundary of that first belt to the international boundary line, except however a belt of 12 miles reserved to the South-western Colonization Railway. In that second belt is comprised the municipality of Argyle.

The respective areas of the said two municipalities were in the North-west Territories and did not form part of Manitoba at the time that the contract was made;

but that portion of territory was added to Manitoba by Acts of the Dominion parliament and of the Manitoba legislature and became part of the province on the first of July of the same year, 1881.

By section 16 of the contract it is provided that 'all stations and station grounds, workshops, buildings, &c., &c., of the company shall be forever free of taxation by the Dominion or by any province to be established, or by any municipal corporation therein, and the lands of the company in the North-west Territories, until they are sold or occupied, shall also be free from taxation for twenty years after the grant thereof from the crown.'

It is contended on behalf of the plaintiffs that the land in the North Cypress and in Argyle having become part of this province, and the lands of the company in general not being exempt from taxation in Manitoba, the said lands can be taxed by Manitoba municipalities. But the Dominion Act providing for the extension of the boundaries of Manitoba, 44 Vic., c. 14, s. 2, s-s.b, says that, 'The said increased limit, and the territory thereby added to the province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.'

This point, however, has been settled by Canadian Pacific Railway vs. Burnett 5 M.R. 395, and Canadian Pacific Railway vs. Cornwallis, 7 M.R.I., the latter case being affirmed by the Supreme Court in Cornwallis vs. Canadian Pacific Railway 19 S. C. R. 702, where Mr. Justice Patterson said, 'It is scarcely necessary to refer to the contention that when any part of the lands ceased to answer the description of land in the North-west Territories by reason of another name being given to it by an Act of the parliament of Canada, it was taken out of the exception. The limits of Manitoba were extended over a portion of the lands, but those lands were still the same lands that the contract described. The contract continued to apply to them just as a contract with or devised to Mary Smith will hold good although by her marriage she becomes Mary Jones.'

It is claimed also that the municipality of Argyle not being in the first belt specially reserved by statute, but in the second reservation which was specifically laid off by order in council dated 2nd November, 1882, was not reserved at the time of the contract and does not come within its terms. But there does not seem to be any material difference, as regards that point, between the said lands and those in North Cypress and they are equally affected by subsection b of section 2 of 44 Vic., c. 14; and the above cases, Canadian Pacific Railway vs. Burnett and Canadian Pacific Railway vs. Cornwallis, are equally in point as to them.

Now, as to these two cases in North Cypress and Argyle, the only question remaining for consideration is the time when the period of exemption commenced to run. It is urged on the part of the plaintiffs that the said period began at the time when the contract was made, or when the lands were earned by the defendants, or when they were reserved or set apart by the Dominion government for the company's selection, or when they were selected by the defendants.

The defendants, on the other hand, claim that the period of exemption commenced only at the time of the issue of letters patent for each portion of the lands.

It cannot commence at the time of the contract, because the contract itself, section 11, speaks of the lands as the grant of land hereby agreed to be made and not as hereby made.

Section 16 of the contract says that the lands of the company in the North-west Territories, until they are either sold or occupied, shall also be free from taxation for twenty years after the grant thereof from the crown. After the defendants had constructed a portion of their railway line they had earned a proportionate part of the land grant. They were entitled to receive certain lands, but not any particular lands ; and that by itself did not constitute a grant from the crown. There was something further to be done before the lands would become theirs ; they had, first, to select the lands or to designate such parcels of said reserved lands which were to be found fairly

fit for settlement and signify to the government their acceptance of the same. By selecting the lands, they became entitled to the particular parcels selected; and here again can it be said, that the fact of their being entitled to those particular parcels of land constituted a grant thereof from the crown to them, according to the true meaning of that term. They had earned the lands, they were entitled to those particular parcels selected by them, they could demand a conveyance thereof; but, until formally conveyed to them, the legal title remained still in the crown.

If the word 'grant' was a term of ambiguous or doubtful meaning, we would have to consider what construction it should receive in the statute in question, but it is a term well understood in legal parlance. In Bouvier's Law Dictionary 'grant' is defined: 'A genetic term applicable to all transfer of real property; a transfer by deed of that which cannot be passed by livery; an act evidencing by letters patent under the great seal, granting something from the King to a subject.' In the Imperial Dictionary: 'Grant, in law, a conveyance in writing of such things as cannot pass or be transferred by word only, as lands, rents, &c.' The same definition is given in the Century dictionary.

That such and no other is in that statute the meaning of the expression 'grant from the crown' may be gathered from the language used in several provisions of the Act respecting the Canadian Pacific Railway, 44 Vic., c. 1, and of the contract or schedule thereto. Section 3 of the Act says that the government may grant to the company twenty-five million acres of land to be conveyed to the company in the manner and conditions agreed upon in the said contract. Speaking of the portions of the railway already constructed, section 5 says that the government may also transfer to the company the possession and right to work and run the several portions of the railway and may convey to the company, &c. The same expression, 'The government shall transfer to the company,' 'shall convey to the company,' are also found in section 7 of the contract. Section 18 says: 'And such grants shall be conveyed to them by the government,' &c.

If it had been intended that the lands were to pass to the company and the grant made complete *pro tanto* as soon as the lands were earned or were selected, one would expect to find in the Act or in the contract, some expression to that effect. But none is found.

If we look at the Hudson's Bay Company land grant, where the title is to pass without patent in certain cases, we find language used conveying that meaning. Section 21 of the Dominion Lands Consolidation Act, 42 Vic., c. 31, says: 'As townships are surveyed and respective surveys thereof confirmed, the governor of the said company shall be notified thereof by the Surveyor General, and thereupon this Act shall operate to pass the title in fee simple in the sections, or three-quarter parts sections, to which the company shall be entitled under clause 17, as aforesaid, and to vest the same in the said company, without requiring patent to issue for such lands.

When such clear language is used in the one case, and nothing of the kind is found in the other, but on the contrary, such expressions as 'lands to be granted' or, 'to be conveyed' are used, it is manifest that, in the latter case the title is not to pass, and the lands are not to be vested until they are actually conveyed by letters patent, or in some other form. It seems to me that until the lands are conveyed to the defendant, there is no grant from the Crown, but only an agreement for a grant.

In my opinion the twenty years' exemption after the grant from the crown should be construed as commencing to run after the issue of letters patent for the different parcels of the said lands.

As to the Springdale case, the school district is wholly in the North-west Territories, but the parties have agreed to submit to the jurisdiction of this court so as to have a judicial decision in this case also. It is claimed by the plaintiffs that because section 16 of the contract, which states that the lands of the company in the North-west Territories shall be free from taxation by the Dominion, or by any province to be

established or by any municipal corporation therein, does not mention exemption by school districts, the said lands are not free from taxation by school districts.

It is true, as argued by the plaintiffs, that by 38 Vic., c. 49, sec. 7, the Lieutenant Governor in Council of the Territories was authorized to make ordinances respecting taxation for local and municipal purposes, including education as provided for by section 11. That section was repealed by 40 Vic., c. 7, sec. 3, and the following was substituted for it: 'The Lieutenant Governor in Council, or the Lieutenant Governor, by and with the advice and consent of the legislative assembly, as the case may be, shall have such powers to make ordinances for the government of the North-west Territories as the Governor in Council may, from time to time confer upon him.

The same provision is found in the Consolidated Act of 1880, 43 Vic., c. 25, sec. 9, and it is contended that the power of taxation having been conferred on the Territorial council or assembly, before the Act respecting the Canadian Pacific Railway was passed, could not be and was not affected by the said Act. But to each of the three above mentioned provisions, viz.: 38 Vic., c. 49, sec. 7; 40 Vic., c. 9, sec. 3; and 43 Vic., c. 25, sec. 9, is appended a proviso which reads as follows: 'Provided, also, that no ordinances to be so made shall be inconsistent with or alter or repeal any provision of any Act of the parliament of Canada, which may now or at any time hereafter, expressly refer to the said territories.' The Act respecting the Canadian Pacific Railway in its preamble, and sections 11 and 16 of the schedule thereto, known as the contract, expressly refer to the said territories. And the references in the said two sections is expressly and specifically in relation to the lands which were to be granted to the defendant company. These and other provisions show that from the outset, parliament intended to limit the general powers of the legislative authority of the territories ; and by Vic., c. 1, sec. 16, they have particularly limited them as to taxation. But, apart from said restriction by statutory enactment, I think it may be conceded that the Dominion parliament, from which the said power emanated, had the inherent authority to limit and curtail the same after it had been given, and more particularly where, as in this case, the said power had never been exercised or acted upon. They have done so by section 16 of the contract.

If we consider the state of the Territories at the time when it was contemplated that. as the country would become settled, provinces were to be established and, in fact a few years after, the territories were divided into several provinces which were mapped out, though they are not yet organized as such, the intention of parliament seems to me quite apparent. They knew that when provinces would be established, such provinces would, unless restricted, have the absolute right to tax the defendants' lands, and they provided against it by the restriction contained in section 16 of the contract.

As to the Territorial legislative authority, it had only a delegated pow er of taxation which could be revoked or limited at any time, and it was considered that the exemption from taxation by the Dominion would apply to the case of these lands and would be sufficient. It does not seem reasonable to suppose that Parliament intended that provinces to be formed out of the territories would be restricted from taxing those lands, and that the Territories themselves, which had only delegated and limited powers, were to be allowed to do so. Otherwise there would be this anomaly, that these lands which would have been taxed for a number of years by the Territorial legislative authorities would, on being made part of the province subsequently established become free of taxation. It does not seem to me that such could have been the intention of Parliament. As I understand it, the true construction of the Act and contract in respect to these lands should be this :—The lands were Dominion lands until, by grant from the crown, they became the lands of the defendants' company.

As Crown lands, they were not subject to taxation. After they became the company's lands they were to be free from taxation for a period of twenty years. The mere setting them apart and the acceptance thereof by the company did not vest the

title in the company ; it only entitled the company to have the selected parcels conveyed to them by letters patent.

These being my views, I must hold that the lands in this case, as in the two others, did not become the defendants' lands and were not taxable until the titles thereof passed to them by formal grant, i.e, by letters patent, and no particular parcel was taxable until after twenty years from the issue of the patent thereof.

RICHARDS, J.

His Lordship Mr. Justice Richards did not give a written judgment. He stated that he concurred throughout with the judgment of the Chief Justice.